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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,282	02/12/2004	Carlos V. Perry JR.	06080003C1	3518
7055	7590	09/07/2006	EXAMINER	
GREENBLUM & BERNSTEIN, P.L.C.			CINTINS, IVARS C	
1950 ROLAND CLARKE PLACE			ART UNIT	
RESTON, VA 20191			PAPER NUMBER	

1724

DATE MAILED: 09/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/776,282	Applicant(s) PERRY, CARLOS V.	
	Examiner Ivars C. Cintins	Art Unit 1724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 24-26 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Zimmer et al. (U.S. Patent No. 5,417,147; hereinafter "Zimmer"). The reference discloses a tank having a bottom and sides, an inlet and outlet, and an effluent distribution system comprising channels **36b** integrally formed in the bottom of the tank, and channels **36a** extending along the side walls of the tank (see col. 2, lines 53-59), wherein the bottom channel **36b** is open to the inside of the tank, spans opposing ends of the tank, and has an additional intersecting channel (see Fig. 2); and this is all that is required by claims 24 and 30. This reference also shows an inlet pipe **46** extending from an interior to the exterior of the tank (see Fig. 1), and further teaches that the tank can be made from a synthetic material (col. 2, line 43); and this is all that is additionally required by claims 25 and 26. Applicant should note that the tank of Zimmer is inherently capable of being employed in a septic system, and this capability is all that is required by apparatus claims 24-26 and 30.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 24-26, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmer in view of Berg et al. (U.S. Patent No. 6,280,614; hereinafter "Berg"). Should it be held that channels **36a** of the Zimmer device are not located "in" the sides of the tank, then this primary reference discloses the claimed invention with the exception of these side channels. Berg shows a liquid holding tank having channels located in both its bottom and sides; and it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide additional channels in the sides of the tank of Zimmer, as taught by Berg, in order to assist in the drainage of liquid to the bottom of this tank.

Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmer in view of Townsend (U.S. Patent No. 3,738,527). The primary reference discloses the claimed invention with the exception of the recited sheet. Townsend teaches lining a liquid storage tank with a protective sheet. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the liquid storage tank of Zimmer with a similar sheet-like liner, in order to protect the inner surface of this primary reference tank. Upon such modification, it would be necessary to provide perforations for the sheet at the bottom of the tank, as required by claim 28, in order to permit drainage of liquid into the troughs located at the bottom of this tank; and therefore, one skilled in the art would have been motivated to make this additional modification.

Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmer and Berg as applied above, further in view of Townsend. The modified

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primary reference discloses the claimed invention with the exception of the recited sheet. Townsend teaches lining a liquid storage tank with a protective sheet; and it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the liquid storage tank of the modified primary reference with a similar sheet-like liner, in order to protect the inner surface of this modified primary reference tank. Upon such modification, it would be necessary to provide perforations for the sheet at the bottom of the tank, as required by claim 28, in order to permit drainage of liquid into the troughs located at the bottom of this tank; and therefore, one skilled in the art would have been motivated to make this additional modification.

Applicant's arguments filed June 27, 2006 have been noted and carefully considered but are not deemed to be persuasive of patentability. Applicant argues that Zimmer shows a tank for water carbonation, and not a septic system tank. It is pointed out, however, that the intended use of a device (i.e. in a septic system) is not a structural limitation, and hence cannot be relied upon to patentably distinguish apparatus claims. It is well settled that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Applicant also argues that there is no motivation for combining the teachings of Zimmer and Berg. Again, this argument has been noted and carefully considered, but is not deemed to be persuasive of patentability. It is pointed out that one of ordinary skill in the liquid handling art, upon viewing the teachings of both Zimmer and Berg, would

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have been motivated to provide additional channels in the sides of the tank of Zimmer, as proposed above, in order to assist in the drainage of liquid to the bottom of the tank in this thus modified primary reference. Such modification is deemed to be especially obvious since Zimmer clearly discloses the importance of proper drainage of liquid to the bottom of the tank (see col. 2, lines 57-59).


Applicant also questions the combination of Zimmer and Townsend, arguing that Townsend does not teach a tank having troughs, much less, intersecting troughs. Once again, this argument has been noted and carefully considered, but is not deemed to be persuasive of patentability. It is pointed out that Townsend is relied upon only for the teaching of lining a liquid storage tank with a protective sheet, not for a teaching of intersecting channels; the concept of a tank with intersecting channels is clearly provided by Zimmer. Since the liner of Townsend would clearly be useful in the carbonation tank of Zimmer, i.e. to protect the inner surface of this primary reference tank from corrosion from the carbonated liquid contained therein, it would have been obvious to one of ordinary skill in the liquid handling art to modify the tank of Zimmer in the manner suggested by Townsend, as proposed above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to I. Cintins whose telephone number is 571-272-1155. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Duane Smith, can be reached at 571-272-1166.

The centralized facsimile number for the USPTO is **571-273-8300**.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Ivars C. Cintins
Primary Examiner
Art Unit 1724

I. Cintins
September 5, 2006